

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 97-0058 ITC
ADJUSTED GROSS INCOME TAX
For Years 1991, 1992, 1993, AND 1994**

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ISSUES**I. Adjusted Gross Income Tax – Foreign Dividend Deduction**

The taxpayer protested the auditor's fifteen-percent adjustment to the Indiana and everywhere sales apportionment factors for foreign source dividend.

II. Adjusted Gross Income Tax –State Income Tax addback

Authority: First Chicago NBD Corp., f/k/a NBD Bancorp, Inc., et al., v. Dept. of State Revenue, 708 N.E.2d 631 (Ind. Tax Court, 1999)

Taxpayer protests add back of Michigan single business taxes as part of state income taxes.

III. Adjusted Gross Income Tax –Federal Credit

Authority: IC § 6-3-1-3.5 (b)

Taxpayer protests adjustments increasing the Indiana adjusted gross income by the taxpayer's Federal fuel tax and the Federal jobs tax credit.

IV. Tax Administration – Waiver of Penalty.

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2(b)

Taxpayer seeks waiver of the penalties because the tax liabilities were due to reasonable cause and not due to willful neglect.

STATEMENT OF FACTS

Taxpayer is a specialty chemical manufacturer. Taxpayer's large-scale production facilities are located outside of Indiana. Products that are manufactured which do not require a full plant quantity production run are produced at Taxpayer's Indiana pilot plant. These small production runs are for some marketed products and some research and product development projects.

I. Adjusted Gross Income Tax – Foreign Dividend Deduction

DISCUSSION

Taxpayer argues that these adjustments did not recognize the administrative charge included in income that was charged to the foreign affiliate generating the above dividends and mistakenly suggests that a prior Letter of Finding from 1993 supports this interpretation. As taxpayer states, "This charge is to cover all expenses the parent company may incur in the management of the subsidiary." The audit made adjustments relating to foreign source dividend deductions that increased the apportionment percentages, audit will verify that no errors were made in calculating the percentages, lowering these percentages if necessary.

FINDINGS

Taxpayer protest denied in part and sustained in part, the apportionment percentages to be verified by audit.

II. Adjusted Gross Income Tax –State Income Tax addback

DISCUSSION

Pursuant to First Chicago NBD Corp., f/k/a NBD Bancorp, Inc., et al., v. Dept. of State Revenue, 708 N.E.2d 631 (Ind. Tax Court, 1999) the Michigan single business tax is not to be added back for state income taxes.

FINDING

Taxpayer appeal sustained.

III. Adjusted Gross Income Tax –Federal Credit

DISCUSSION

Taxpayer doesn't cite a specific code violation in the auditor's determination and fails to reconcile the claim made with IC § 6-3-1-3.5 (b) "Adjusted Gross Income" defined, which derives Indiana's adjusted gross income from Federal "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows." The statute's adjustments do not permit a reduction by these federal credits and taxes, and the statute's omission of these requires their addition to taxpayer's adjusted gross income.

FINDING

Taxpayer protest is denied.

IV. Tax Administration – Waiver of Penalty.

DISCUSSION

Finding the liabilities were "due to negligence," IC 6-8.1-10-2.1 (a)(3). The Department imposed ten percent penalties. The term "negligence" is defined in 45 IAC 15-11-2 (b), pertinently:

"Negligence" on behalf of a taxpayer is defined as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence.

The majority of the assessment was due to errors that taxpayer admitted to, but did not file amended returns for. While there was no intent to defraud the State of Indiana of tax money due; a prudent taxpayer must review returns prior to submission. No waiver of the penalty is appropriate.

FINDINGS

The taxpayer's appeal is denied.